IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Bail Appl..No. 3740 of 2007()

(C.C. NO. 37/2005 of JUDICIAL FIRST CLASS MAGISTRATE, PATTAMBI)

PETITIONER/ACCUSED 1 & 3

---

1. SUDHAKARAN, S/O.KUNJUMON, AGED 24 YEARS, MUKKALIVEEDU, KEEZHOOR, KUNNAMKULAM.

2. ASHRAF @ APPACHI, S/O.BEERAN, AGED 25 YEARS, PANJACHIRAYILVEEDU P.O.THALI, PARAPPURAM.

BY ADV. SRI.C.A.CHACKO
SRI. C.M. CHARISMA
SRI. N.A. SHAFEEK

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. S.U. NAZER, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3740 of 2007

Dated this the 21st day of June, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1 and 3 in a pending prosecution under Section 379 read with 34 I.P.C. Consequent to their non appearance before the learned Magistrate, they find warrants of arrest issued by the learned Magistrate chasing them. They are willing to surrender before the learned Magistrate, but apprehends that their application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, the petitioners pray that directions under Section 438 Cr.P.C may be issued in their favour.

2. The decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662] is authority for the proposition that powers under Section 438 Cr.P.C can be invoked even in a case where the apprehended arrest is in execution of a non bailable warrant issued by a court. But even for that sufficient and satisfactory reasons must be shown to exist. I find no such reasons in this case.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate

would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This bail application is, in these circumstances, dismissed., but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-